IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

92-207

UNITED STATES OF AMERICA

-V-

XAVIER V. PADILLA, ET AL.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR DONALD LAKE SIMPSON
IN OPPOSITION

Respectfully Submitted By:

(S) Donald Lake Simpson

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Question Presented :

1. Whether membership in a joint venture to transport drugs gives co-consp--irators a legitimate expectation of privacy entitling them to challenge the in--vestigatory stop of one of the members of the conspiracy, and the subsequent search of the vehicle he was driving ?

Respondents' proposed answer is: Yes.

List Of Interested Parties :

1. United States Of America

2. Xavier V. Padilla

3. Maria Jesus Padilla, a/k/a Suzy

4. Jorge Padilla

5. Warren Strubbe

6. Maria Sylvia Simpson

7. Donald Lake Simpson

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-21a) is reported at 930 F. 2d 854.

JURISDICTION

The judgment of the court of appeals was entered on April 1, 1992. The jurisdiction of this court is timely invoked under 28 U.S.C. § 1254 (1), in that the petitioner's petition for a writ of certiorari was filed on or before July 30, 1992.

STATEMENT

After an indictment was returned in the United States District Court for the District of Arizona, which charged therein, the Respondents Simpson, his wife Maria Simpson and four other with conspiracy to distribute and possess

with intent to distribute cocaine, in violation of 21 U.S.C. § 846, and possession of cocaine with intent to distribute it, in violation of 21 U.S.C. § 841 (a) (1), as well as charged respondent Xavier Padilla with engaging in a continuing criminal enterprise, in violation of 21 U.S.C. § 848, the District Court granted respondent's motion to suppress most of the above poisonous fruits of incriminating evidence obtained without prior judicial authorization or reasonable probable cause in violation of respondents' Constitutional privacy interests under the Fourth Amendment. The Ninth Circuit Court of Appeals affirmed the District Court's decision in part, vacated in part and remanded the matter with directions. The Goverment has now submitted a petition for writ of certiorari to review the lower courts' decision. This petition is submitted to oppose the Goverment's efforts before the Honorable Court and to ask that the lower courts' decision be summarily affirmed and that certiorari be denied.

PROCEDURAL HISTORY

On September 25, 1989, Arizona Department of Public Safety patrolman Russell Fifer stopped the car driven by Luis Arciniega. After officer Fifer received radio dispatched information that the license plate number purportedly affixed on the Cadillac driven by Arciniega was registered to a Pontiac, he signaled Arciniega to stop and Arciniega immediately pulled the car over. When officer Fifer walked up to the car he requested Arciniega's driver's license and the car registration. Arciniega gave officer Fifer his personal driver license and valid insurance card information on the Cadillac all reflecting the names of Donald Lake Simpson and Maria Sylvia Simpson.

Officer Fifer then requested a driver's license, warrant and another car registration check through the NCIC computer based upon that additional information and documentation. A police radio dispatcher immediately informed Off-

-icer Fifer that Arciniega had a valid driver's license, and that the initial license plate information provided him earlier was incorrect and that the lic-ense plate information given by him were in fact correct and registered to a Cadillac owned by the Respondents Donald and Maria Simpson.

By then, another Public Safety patrolman had arrived on the scene of the stop only moments earlier, and asked Arciniega if he minded if a search of the car is conducted. Arciniega responded, " The whole car ? " Without responding to Arciniega's responsive question, and without receiving Arciniega's actual or implied consent to search, the patrolman proceeded to search the glovebox and then placed the steering wheel in lock staus and removed the keys from the ignition and then proceeded to the rear of the car and opened the trunk with then, wherein he discovered the cocaine. Arciniega was immediately arrested and charged with suspicion of possession of a controlled substance. At that time no field test of the substance discovered was performed nor did the officers then apply for a search warrant to complete their search of the car.

After the above intercourse between Arciniega and Officer Fifer and other law enforcement officers, and receiving inculpatory statements resulting from custodial interrogation, Arciniega was then propositioned and he agreed to make a controlled delivery of the cocaine from that custodial setting. First, Arciniega and safety patrol officers set up operations from a motel in Tempe, Arizona. Second, shortly thereafter, Arciniega placed a telephone call to the residence of the Respondents Jorge and Maria Padilla requesting them to meet with him at that location. Shortly after arriving at the motel, the Padillas attempted to drive off in the Simpsons' Cadillac laden with " concrete bricks " previously substituted for the 560 pounds of cocaine and were arrested there on the scene. After being subjected to inherently coercive custodial interrogation by arresting officers, Maria Padilla succumbed and then led law enforcement

officers to a house which Exaier Padilla was staying and, he too, was arrested later and charged as one of the principals in a drug smuggling operation and conspiracy to distribute 560 pounds of cocaine.

Prior to trial, respondents filed a proper motion asking the court to suppress all evidence resulting from the warrantless and illegal search of respondent Simpsons' car Arciniega was driving when apprehended. Respondents all argued that they had recognizable standings to challenge the stop, search and seizure of the car Arciniega was driving, and that as a matter of law, it was wholly unreasonable, unauthorized and unlawful under the laws and Constit-ution of the United States. The District Court agreed and so ruled, based upon the particular evidence presented and developed at the suppression hear-ing, that respondents had equal standing to challenge the stop and search of the car and the resulting fruit discovered thereof, because the Goverment's evidence amply purported that respondents were all involved in " a joint ven-ture for transportation " of the discovered contraband, and that the joint venturers " had control of the contraband " at the time of the stop. Petit-ioner's Appendix at 22a.

In sum, the Goverment's evidence developed at the hearing clearly and forcefully demonstrated that [the] Public Safety Officers wholly lacked any reasonable suspicion or cognizable probable cause to either stop Arciniega or to even conduct the patently unreasonable search of the Simpsons' vehicle driven by Arciniega. Despite this legally flawed position, Petitioner maintain and argued at the hearing that the stop of the car was valid and that the sea-rch of the car was consensual. Respondents did not concede either point. The District Court agreed with respondents claims that Arciniega had not, and in fact, could not legally give the officers a valid consent to search the Simp-sons' car under the surrounding circumstances, and that the resulting search

was wholly unreasonable. In granting the respondents' Motion to suppress all evidence found in Simpsons' vehicle, the District Court found that there would not have been a prosecution by the Goverment in the absence of the il-legal stop and search of Arciniega and the car owned by the Simpsons. Petit-ioner's Appendix at 31a-32a, 33a-34a.

Petitioner appeals to the United States Court of Appeals for the Ninth Circuit and participated in oral argument on September 19, 1991. On April 1, 1992, the Ninth Circuit, without dissent, affirmed the District Court's sup-pression order as to respondents Xavier Padilla, Donald Simpson, and Maria Sylvia Simpson; and also remanded the case for further findings with respect to respondents Jorge and Maria Padilla; and additionally reversed as to the respondent Warren Strubbe.

In ruling on the standing issue in question by Petitioner herein, Honor-able Circuit Judge Nelson, speaking for the Court, correctly held that: (1) three defendants (the Simpsons and Xavier Padilla) involved in a formal arr-angement for transportation of drugs and with responsible positions in the venture had standing to challenge legality of search of vehicle, although they were not present at the time; (2) as to two other defendants (Jorge and Maria Padilla), it was necessary to determine whether they were responsible partners of the venture or merely employees in a family operation; * (3) a sixth defendant (Warren Strubbe), who was a passive participant in larger conspiracy, did not have standing; (4) courier's cooperation did not separate his information from illegal arrest, so that all evidence against the first three defendants based on illegal stop was properly suppressed; (5) state-ments by another person two weeks later should not have been suppressed.

* The Petitioner's Motion for Extention of Filing Time misstated the record that the court extended its ruling to all 6 defendants.

More specifically, the Ninth Circuit found that respondents Simpson and Xavier Padilla were entitled to challenge the stop and search of the Simpsons' car driven by Arciniega, and in doing so, relied upon a well-established line of Circuit precedents which granted Fourth Amendment standing to participants in a joint criminal venture who have asserted an interest in the place search-ed or the property seized by virtue of their purported membership in that joint venture. Petitioner's Appendix at 9a-11a. In these precise circumstance, the Court further found that the Simpsons and Xavier Padilla each had standing, " not simply because the Simpsons owned the Cadillac car and jointly possessed the drugs with Xavier, but also because they participated in the organization, particularly on the day of the stop. " Pet. App. at 12a.

It concluded that the unreasonable and unlawful stop and search of Arcini-ega and the Simpsons' car driven by him, amply justified the suppression of primarily all the evidence discovered thereunder, with the exception of the statements of Guillermo Owen who came forward more than two weeks after the stop and search in question and provided incriminating information against Xav-ier Padilla and Donald Simpson as a result of a wholly unrelated drug arrest. Additionally, Judge Nelson also affirmed the District Court's finding that re-spondent Warren Strubbe did not have standing to make a Fourth Amendment chal-lenge, and therefore did not even discuss the suppression issue with respect to him.

REASONS FOR NOT GRANTING THE PETITION

Petitioner erroneously contends inter alia that the decision of the court of appeals is inconsistent with basic tenets of Fourth Amendment Law, and that the fruits of Officer Fifer's stop, search and seizure of Arciniega and the Simpsons' car should not had been excluded as to respondents Simpsons and Xav-

-ier Padilla because the stop of Arciniega did not violate either of their per-
-sonal Fourth Amendment Rights. Further, that the Ninth Circuit's "coconspirator exception " is contrary to Fourth Amendment principles established by this Court, and that by focusing on each respondent's role in the criminal venture, rather than on whether each was the victim of an illegal search or seizure, the Court of Appeals erred. For those reasons, therefore, the decision below stands or falls on the viability of the Ninth Circuit's " joint venture " theory of standing. Re-
-spondent Simpson asserts that this Court has repeatedly found these arguments unpersuasive in legitimate substance as a matter of law and accordingly, has con-
-sistently rejected Petitoner's prior similar challenges made here. See, e.g., United States -V- Quinn, 751 F. 2d 980 (CA 9 1984), Certiorari granted, 474 U.S. 900 (1985), Cert. Dismissed, 475 U.S. 791 (1986), and its progeny; See also, United States -V- Johns, 707 F. 2d 1093 (CA 9 1983)("Joint venturers who exercised continuing control and a reasonable legitimate expectation of privacy in the place that was search have standing"). The Petitioner's legal position herein asserted is similarly flawed and warrants wholly no relief. The Ninth Cir-
-cuit, nevertheless, once again fully addressed and carefully determined these claims and found them meritless.

The Court held, after carefully and paintakingly examining the record evid-
-ence and the full body of governing law, specifically, that respondents Simpsons and Xavier Padilla had established a legitimate reasonable expectation of privacy to assert standing. The Court further found and reasoned that the respondents Simpson based their standing not only on their ownership of the car but also be-
-cause they had engaged in an organized effort to transport the contraband. The Court also made clear, however, that " neither ownership nor presence at the scene of crime were required to assert a reasonable expectation of privacy under the Fourth Amendment ", **citing United States -V- Johns, 851 F. 2d 1131, 1136 (CA 9 1988); United States -V- Perez, 689 F. 2d 1336, 1338 (CA 9 1982).** Instead,

we have consistently held that a coconspirator's participation in an operation or arrangement that indicates joint control and supervision of the place search-
-ed establishes standing, **citing United States -V- Davis, 932 F. 2d 752 (CA 9 1991); United States -V- Quinn, supra; United States -V- Pollock, 726 F. 2d 1456 (CA 9 1984).**

In discussing the standard of review of standing, the Ninth Circuit Court correctly held that the District Court's factual findings on the issue of stand-
-ing must be accepted unless clearly erroneous, **citing United States -V- Broad-
-hurst, 805 F. 2d 849, at 851 (CA 9 1986); United States -V- Kovac, 795 F. 2d 1509, 1510 (CA 9 1986), CERT. DENIED, 479 U.S. 1065 (1987).** In this critical aspect of the review process the petitioner has not and cannot seriously point out erroneous factual finding underlying the lower court's suppression order. "The Petitioner attempts to disregard the initial warrantless and unreasonable investigatory stop and search without a " reasonable " or " founded " suspicion of any criminal activity ", **United States -V- Greene, 783 F. 2d 1364, 1367 (CA 9), CERT. DENIED, 476 U.S. 1185, 106 S.Ct. 2923, 91 L.Ed. 2d 551 (1986),** and now seeks this Court's concurrence in not taking into full account the total-
-ity of that wholly unjustified illegal stop and search of the respondents' car, in absence of a reasonable suspicion of criminal activity, or distinguishable exception to the " fruit of the poisonous tree " doctrine. **Terry -V- Ohio,392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968); United States -V- Cortez, 449 U.S. 411, 417, 101 S. Ct. 690, 694, 66 L. Ed. 2d 621 (1981).** Hence, Petition
-er's attempts to minimize and disregard these important factors by arguing that the fruits of Officer Fifer's stop of Arciniega should not be excluded as to re-
-spondents unless the stop of Arciniega violated their personal Fourth Amendment Rights, must be rejected based upon the above authority alone.

This Court has previously sent clear mandates down articulating what actions

constitutes a legally permissible warrantless investigatory stop [and] the level of cause necessary to justify the investigatory stop and search under the facts of this case. The Ninth Circuit has done likewise explaining that the requisite level of cause is a " reasonable " or " founded " suspicion of crimi--nal activity. **United States -V- Greene, supra, at 1367; United States -V- Corral- villavicencio, 753 F. 2d 785, at 789 (CA 9 1985).** Each of these decis--ions were direct offsprings of both **Terry -V- Ohio, supra,** and **United States -V- Cortez, supra,** the Court holding in **Cortez**, that " An investigative stop must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity." **Id., 449 U.S. 411, at 417, 101 S. Ct. 690, at 694, 66 L. Ed. 2d 621 (1981).** In the instant case, Petit--ioner wholly failed to demonstrate any of the necessary factors of founded su--spicion to justify its opposition to the respondents' standing under the co--conspirator exception to challenge all resulting physicial evidence obtained from the illegal stop and search of respondents' car. This failure provides an additional bases why this Court must reject and deny Petitioner's request for a writ of certicrati in this case.

Additionally, the Fourth Amendment provides :

> **" The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrant shall issue, but upon probable cause, supported by Oath or Affirmation, and particularly describing the place to be searched, and the persons or things to be seized. "**

It is no question that the above right to security in person [and] pro--perty provides continuing protection against a vast array of arbitrarily and illegally conducted Governmental searches and seizures such as occurred in the instant case. A search compromises the individual interest in privacy; a seiz--ure deprives the individual of dominion over his or her person or property.

United States -V- Jacobsen, 466 U.S. 109, AT 113, 80 L. Ed 2d 85, 104 S. Ct. 1622 (1984); Mincey -V- Arizona, this Court unanimously left no doubt about the basic rule of Fourth Amendment jurisprudence applicable to the Petitioner's petition for a writ of certiorari. Honorable Justice Stewart speaking for the Court stated:

> " The Fourth Amendment proscribes all unreasonable searches and seizures, and it is a cardinal principle that " searches conducted outside the judicial process, without prior approval by judge or magistrate, are pre se unreasonable under the Fourth Amendment-- subject only to a few specifically established and well-delineated exceptions, " citing **Katz -V- United States, 389 U.S. 347, 357, 19 L. Ed 2d 576, 88 S. Ct. 507 (footnotes omitted); United States -V- Ross, 456, U.S. 798, 824-825, 72 L. Ed 2d 572, 102 S. Ct. 2157 (1982).** This above binding precedent point up another serious flaw in the Petitioner's reasoning that neither Respondents' privacy interest nor poss--essory interest has been invaded by Officer Fifer's stop, search and seizure of the contraband found in Respondents Simpsons' vehicle, **Id., 437 U.S. 385, AT 393, 57 L. Ed. 2d 290, 98 S. Ct. 2408,** and the Ninth Circuit's " coconspir--ator exception " extended the respondents Simpsons and Xavier V. Padilla is contrary to Fourth Amendment priniples established by this Court, **citing Alderman -V- United States, 394 U.S. 165, 174 (1969); Standefer -V- United States, 447 U.S. 10, 23-24 (1980); AND Brown -V- United States, 411 U.S. 223, 230 & n.4 (1973).**

In addition to erroneously overlooking the important difference between privacy interest and possessory interest, as developed in earlier precedents of this Court, **Maryland -V- Macon, 472 U.S. 463, 469, 86 L.Ed 2d 370, 105 S. Ct. 2778 (1985); United States -V- Jacobsen, 466 U.S. 109, 113, 80 L. Ed. 2d 85, 104 S. Ct. 1622 (1984),** Petitioner categorically failed to make a rat-

-ional analysis of either implicated interest, particularly " a legitimate expect-
-ation of privacy interest "--- versus --- " the things to be seized reasonable possessory interest " [that] very well may have been derived solely from re-
-spondents' alleged joint participation and joint venture relationship in the transportation of the cocaine drugs, and when viewed in this legal context, re-
-spondents' personal Fourth Amendment Rights in terms of both privacy and poss-
-essory interest (s) are sufficiently implicated in the place searched and the property seized over which [the] Respondents exercised joint control and super-
-visory responsibility on the day of the stop and seizure to qualify and with-
-stand intense scrutiny under the Ninth Circuit's " joint venture " theory of standing.

Moreover, Respondent wholly disagrees with Petitioner's argument and con-
-flicting disagreement on one hand that even if respondents had a possessory in-
-terest in the coccine, the brief investigatory stop (without mentioning the full-blown warrantless search conducted thereof) of Arciniega did not interfere with interest in any meaningful way; and on the other hand, Pet. Brief at 12, n. 5, we agree, of course, that if respondents had a legitimate expectation of pri-
-vacy in the trunk of the Cadillac, they would not lose their ability to challen-
-ge the search of the trunk merely because it contained 560 pounds of cocaine. Their possessory interest in the cocaine, however, did not give them a privacy interest in the place where it was located, citing **United States -V- Salvucci, 448 U.S. 83, 93 (1980); Rawlings -V- Kentucky, 448 U.S. 98, 104-106 (1980).** These arguments are wholly contradictory and grossly misstate the law and the re-
-cord evidence in this case. Pet.'s Brief at 12 & n.5; **See also, United States-
-V- Salvucci, 448 U.S. 83, AT 91-92; Rakas -V- Illinois, 439 U.S. 128, AT 139-
-140.**

Contrary to the Petitioner's misguided contentions above, which once again

failed to make an rational analysis of the substantial body of relevant underly-
-ing controlling case laws governing " standing ", in **Rakas -V- Illinois,** this Court explicitly rejected pre-Rakas concepts of " vicarious " standing to assert one's Fourth Amendment Right. **Id., at 133-138, 99 S. Ct., at 425-428.** Reiterat-
-ing that Fourth Amendment Rights are personal rights, the Court stated that"[a] person who is aggrieved by an illegal search and seizure only through the intro-
-duction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment Rights infringed. " **Id., at 134, 99 S. Ct., at 425.**

In the case now before the bar, the record evidence developed below and cor-
-rectly ruled on by each of the lower courts, clearly shows that Respondents Simpson properly asserted a subjective expectation of privacy as well as a valid possessory interest in their automoblie and its contents that must be considered not only reasonable but also objectively reasonable as a matter of law. **See Smith -V- Maryland, supra, 442 U.S.,at 740, 99 S. Ct., at 2580; Katz -V- United States, 389 U.S. 347, 361, 88 S. Ct. 507, at 516 (1967);** and as such, has dem-
-onstrated a legitimate expectation of privacy as well as ownership interest in the contraband seized from the trunk of their vehicle to establish unquestionable Fourth Amendment standing under the " coconspirator exception " for purposes of Fourth Amendment inquiry into the lawless stop and search in question, and whet-
-her society is prepare to acknowledge that the warrantless search of respondents' car violated the Fourth Amendment. **Katz, supra, 389 U.S., 361, 88 S. Ct., at 516; Salvucci, supra, 448 U.S., at 90-91 & n.5, 100 S. Ct., at 2552 & n.5; Rakas, supra, 439 U.S., at 136, 99 S. Ct., at 426; Elkins -V-United States, 364 U.S. 206, 4 L.Ed. 2d 1669, 80 S. Ct. 1437 (1960).**

Taken together*, the foregoing legal precedents mandates that Petitioner's question presented for review as well as its supporting argument be found in full context wholly meritless under the prevelant Fourth Amendment calculus on stand--ing to challenge the herein lawless and unconstitutional intrusion on the const--itutionally protected privacy interest of the Respondents Simpson. Moreover, considering all the circumstances in light of the standard set forth in **Elkins**, it is clearly unreasonable and inconsistent with Fourth Amendment Jurisprudence for the Petitioner to yet be prusuing prosecution of this matter, after receiv--ing adverse decision, and becoming facts, showing that the evidence discovered was obtained by state officers during a lawless and unreasonable search and seiz--ure that was found to have violated Respondents' immunity from unreasonable searches and seizures under the Fourth Amendment as a result of Respondent's timely objection asserted in the courts below. **Id**.

Further, the **Elkins** court left no room for doubt that the herein petition for writ of certiorari should and must be denied, as a matter of constitutional law and as defined by **Gambino -V- United States, 275 U.S. 310, 72 L.Ed. 293, 48 S. Ct. 137, 52 ALR 1381.**

In **Gambino**, the Court found that state officers, as herein, had seized liq--uor from the defendants' automobile after an unlawful search in which no federal officers had participated. The liquor was admitted in evidence against the defen--dants in their subsequent federal trial for violation of the National Prohibit--ion Act. This Court reversed the judgment of conviction, holding that the ill-

*** Contrary to the record evidence developed at the suppression hearing, Pet--ition's Brief at 13, n.6, erroneously states that Donald Simpson held title to the vehicle, and Maria Sylvia Simpson claimed ownership interest based on her co--mmunity property rights, citing Resp. C.A. Br. 9. Petitioner obviously is play--ing a long shot gamble this court or its staff will not carefully and throughly examine and read the pertinent records. Respondent Simpson respectfully hopes and trusts that Court do no less in the interest of justice.**

--egally seized evidence should have been excluded. Pointing out that there was " no suggestion that the defendants were committing, at the time of the arrest, search and seizure, any state offense; or that they had done so in the past; or that the [state] troopers believed that they had, " the Court found that " [t]he wrongful arrest, search and seizure were made solely on behalf of the United States. " **Id. 275 U.S., at 314, 316; Elkins, supra, 364 U.S., at 211-212.**

Finally, the respondents Donald Lake Simpson and Maria Sylvia Simpson also ask this Honorable Court to dismiss the Government's request for writ of certio--rari with prejudice for the following reasons: (i) this Honorable Court lacks jurisdiction as did the Ninth Circuit Court of Appeals to rule upon the merits of a case of a District Court where the trial is in progress. The District Court's pre-trial suppression of evidence order is but part of the trial process and is not a dismissal of the indictment. **See, Abney-V- United States, 431 U.S. 651, 52 L. Ed.2d at 658, 97 S. Ct. 2034 [7,8]; (ii) since appeals of right** have been authorized by congress in criminal cases, as in civil cases, there has been a firm congressional policy against interlocutory or " piecemeal " appeals and courts have consistently given effect to that policy. Finalty of judgment has been required as a predicate for federal appellate jurisdiction. **DiBella -V- United States, 369 US 121 (1962).**

The effect of the statute is to disallow appeal from any decision which is tentative, incomplete or informal. Appeal gives the upper courts a power of re--view, not one of intervention. So long as the matter remains open, unfinished or inconclusive, there may be no intrusion by appeal. Nor does the statute per--mit appeals, such as the Government's petition, even from fully consummated decisions, where they are but steps towards final judgment in which they will merge. The purpose is to combine in one review all stages of the trial proceed--ing that effectively may be reviewed and corrected if and when final judgment

results. But this order of the District Court that Petitioner is appealing did not make any step toward final disposition of the merits in this case and will not be merged in final judgment as conferred by the statute, and thus, at this time, Petitioner should be denied any review until the whole case is adjudicated on the trial level.

As this Court is well aware, **DiBella, supra, at 124, Congress requires that review of nisi prius proceedings await their termination by final judgment.** Accord, Cobbledick -V- United States, 309 US 323, 324-326, 84 L. Ed. 783, 60 S. Ct. 540 (1940); DiBella, supra, at 126. Clearly, the order Petitioner appeals from fails to reach the crieria of falling within the so called " collateral order " exception to the final-judgment rule first announced in Cohen -V- Beneficial In--dustrial loan Corp., 337 U.S. 541, 93 L. Ed. 1528, 69 S.Ct. 1221 (1949), and therefore is not a final decision within the meaning or purpose of 28 U.S.C., § 1291 [28 USCS § 1291]; Cohen, Supra, at 546, 93 L.Ed. 1528, 69 S. Ct. 1221.

Moreover, Respondents recognize and concedes the validity of 18 U.S.C., § 3731 shall be liberally construed to effectuate its purpose of the United States timely appealing the District Court suppression of evidence order, nonetheless, maintains and argues that taking all the foregoing factors into full account, the true issues remains wholly unaltered by Petitioner's primary argument, that is, (i) the record evidence show the Government did not have [a] reasonable suspicion that the respondents were in engaged in any criminal activity at the time the Government stopped, seized and searched Arciniega and Respondents' veh--icle; and (ii) that Respondents' legitimate ownership of vehicle and member--ship in a joint venture to transport drugs gave respondents as co-conspirators a legitimate expectation of privacy entitling them with standing to challenge the investigatory stop of one of the members of the conspiracy, and the subsequent search of the respondents' vehicle he was driving; and (iii) the District

Court's findings and ultimate order were basically error free and Petitioner failed on each judicial level below to show that they were in fact clearly err--oneous as a matter of law; and thus, these consistent failures should suffice to end [the] Court's herein inquiry for all practical purpose, and the lower courts' order should be affirmed as to Respondents herein.

In conclusion, Petitioner's continuing repeated attacks made on the lower federal courts' proper enforcement of their flagrant violations of the Fourth Amendment must be rejected. The Fourth Amendment judisprudence announced by the decisions of the Ninth Circuit Court of Appeals are designed in specific purpose and intent to protect the good guy as well as the bad to be left alone in our homes, our cars, and wherever we may go. If the government is not deterred from illegal intrusions of privacy by excluding whatever evidence is seized, the Four--th Amendment will have hardly no meaning or force. Surely an appreciation for the history and purpose of our basic Fourth Amendment freedoms will never allow emotional fear to justify an enviroment where is no check on the abuse of the governments police power. The exclusionary rule serves one purpose --- deterren--ce, United States -V- Janis, 428, U.S. 433, 446,96 S.Ct. 3021, 3028, 49 L.Ed. 2d 1046 (1976); Mapp -V- Ohio, 367 U.S. 643, 656, 81 S. Ct. 1684, 1692, 6L.Ed 2d 1081 (1961), to repeated police misconduct alleged herein.

Justice Clark wrote for the Court in **Mapp** that the exclusionary rule was both " logically and constitutionally necessary. " He observed the doctrine was " an essential part of the right to privacy " and was " an essential ingredient of the right " to be free from unreasonable searches and seizures. **Id.** He then concluded, " to hold otherwise is to grant the right but in reality to withhold its privilege. " **Id. 367 U.S. 643, at 656, 81 S. Ct. 1684, 1692, 6 L. Ed. 2d 1081 (1961).** Petitioner attempts to proceed in reckless disregard of these legal pr--inciples. Nonetheless, it is the law, Petitioner's herein expressed disagreement

is immaterial and clearly beside the point, and this Court is obliged to re--quire Government compliance.* **United States** -V- **Chadwick**, 433 U.S. 1, 97 S.Ct. 2476, 53 L.Ed. 2d 538 (1977).

The record evidence leave no room for doubt that herein respondents had a reasonable legitimate expectation of privacy as well as a possessory interest in the things seized and the place searched, and therefore had a legitimate standing to question and attack an illegal and unreasonable stop and search that undisputedly contravened the Fourth Amendment. **United States** -V- **Jeffers**, 342 U.S. 48, 72 S.Ct. 93, 96 L.Ed. 59 (1951); **Jones** -V- **United States**, 362 U.S. 257, 80 S.Ct. 725, 4 L.Ed. 2d 697 (1960); **Rakas** -V- **Illinois**, 439 U.S. 128, 99 S.Ct. 421, 58 L.Ed. 2d 387 (1978); **United States** -V- **Salvucci**, 488 U.S. 83, 92, 100 S.Ct. 2547, 2553, 65 L.Ed. 2d 619, 628 (1980); **Rawlings** -V- **Kentucky**, 448 U.S 98, 100 S.Ct. 2556, 65, L.Ed. 2d 633 (1980); **United States** -V- **Quinn**, 751 F. 2d 980, (CA 9 1984), **Cert. Granted**, 474 U.S. 900 (1985), Cert. Dismissed, 475 U.S. 791 (1986). The Petitioner's legal position also wholly failed to pay due regard to this Court's repeated Fourth Amendment jurisprudence that the ins--tant type warrantless search and seizure involved in this case are per se pres--umptively unreasonable and such presumption must be jealoursly maintained in a constitutional framework. **See**, **e.g.**, **Payton** -V- **New York**, 445 U.S. 573, 586, 100 S.Ct. 1371, 1380, 63 L. Ed. 2d 639 (1980); **Coolidge** -V- **New Hampshire**, 403 U.S. 443, 445, 474-475, 91 S.Ct. 2022, 2032, 2042, 29 L.Ed. 2d 564 (1971) (footnotes omitted) (emphasis added). This instant case therefore merits similar treatment.

In sum, the decisions of the District Court and the Court of Appeals flatly rejected petitioner's Fourth Amendment challenge asserted to the issue of " coconspirator standing exception " and consistent with the Court's govern--ing Fourth Amendment jurisprudence and analysis employed when it has consider--ed prior similar challenges, the petitioner's latest challenge should be re--jected as well, in the light of **United States** -V- **Quinn**, **supra**; and **United States** -V- **Chadwick**, 433 U.S. 1, 97 S. Ct. 2476, 53 L. Ed. 2d 538 (1977).

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* In **Chadwick**, this Court held invalid a warrantless search of a locked footlocker lawfully seized as incident to defendant's arrest but which was not immediately associated with him. A fortiori as in **Chadwick**, equal administration of law compels that results herein.

CONCLUSION

Wherefore, based upon the above record evidence and authorities, The Petit--ion for writ of certiorari should be denied accordingly.

Respectfully submitted and dated this the Twenty first day of September 1992.

Respectfully Submitted
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the fore--going opposition to petitioner's petition for writ of certiorari has been mailed, first class, postage pre-paid, to the following named parties:

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Dated this the 21st day of September 1992.

Respectfully Submitted
(S) Donald Lake Simpson
Donald Lake Simpson, Respondent-Pro Se

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

UNITED STATES OF AMERICA, PETITIONER	)	
	)	
V	)	NO. 92-207
	)	
XAVIER V. PADILLA, ET AL.	)	

CERTIFICATE OF SERVICE

It is hereby certified that all parties required to be served have been served copies of the **REPLY BRIEF FOR THE UNITED STATES** by mail on October 26, 1992.

SEE ATTACHED SERVICE LIST

Kenneth W. Starr/cs
KENNETH W. STARR
Solicitor General

October 26, 1992

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AMENDED - CERTIFICATE OF SERVICE

Walter B. Nash III, a member of the United States Supreme Court Bar, and counsel of record for the Respondents, having filed a brief in opposition of the Petition for Writ of Certiorari filed by the United States of America in the case of United States of America v. Xavier V. Padilla, case number 92-207, hereby avows that three copies of the brief was served upon the following counsel for Petitioner by first class mail on October 16th, 1992.

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OCTOBER TERM, 1992

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